

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

LINDA DOWNS,

Plaintiff,

vs.

RIVER CITY GROUP, LLC, et al.,

Defendants.

3:11-cv-00885-LRH-WGC

**ORDER**

re: Plaintiff's Motion to Compel  
Further Discovery from  
Wells Fargo Bank, N.A.  
(Doc. # 222)

Before the court is Plaintiff Linda Downs' ("Downs") Motion to Compel Further Discovery from Wells Fargo Bank, N.A. ("Wells Fargo"). (Doc. # 222.)<sup>1</sup> Wells Fargo opposed Downs' motion (Doc. # 235) and Downs replied (Doc. # 238). The motion has been referred to the undersigned by Senior District Judge Larry R. Hicks. After a thorough review, Downs' motion (Doc. # 222) is denied.

**I. FACTUAL BACKGROUND & PROCEDURAL HISTORY**

**A. Factual Basis for Complaint**

In July 2005, Downs, along with her husband Ronald, purchased real property through a mortgage note and deed of trust originated by former defendant River City Group, LLC. In early December, 2009, Downs and her husband obtained mortgage payment protection insurance advertised by Wells Fargo and underwritten by defendant Minnesota Life Insurance Company ("Minnesota Life"). The insurance policy provided for twelve (12) monthly payments of \$2,398.23—the amount of the Downs' mortgage—to be paid to Wells Fargo in the event of Ronald's death.

On May 21, 2010, Ronald passed away. On June 10, 2010, Downs contacted both Wells Fargo

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<sup>1</sup> Refers to court's docket number.

1 and Minnesota life and notified them of Ronald's passing and requested the payment of the mortgage  
2 payments pursuant to the mortgage insurance policy. On June 17, 2010, Minnesota Life acknowledged  
3 receipt of Downs's claim and requested additional information including: (1) a certified death certificate;  
4 (2) a completed Health History Information Request form; and (3) a completed Health Insurance  
5 Portability and Accountability Act ("HIPAA") authorization form. Downs sent the requested information  
6 on July 6, 2010, and Minnesota Life received the information on July 9, 2010.

7 After receiving the information, Minnesota Life communicated to Downs that because Ronald  
8 had died within the first two years of the policy's effective date, the coverage was contestable, and  
9 Minnesota Life would be conducting a routine coverage review. As part of its coverage investigation,  
10 Minnesota Life requested additional medical record from Dr. John Williamson and the Northern Nevada  
11 Medical Center ("NNMC"). Minnesota Life received the records from Dr. Williamson on July 29, 2010,  
12 and from NNMC on August 11, 2010.

13 On August 18, 2010, Minnesota Life completed its contestability review, approved Downs' claim  
14 for payment, and sent Wells Fargo a check for \$9,572.92 to cover the mortgage payments from May  
15 2010, through August 2010. Thereafter, Minnesota Life made payments in accord with the payment  
16 schedule as prescribed under the policy. However, prior to the disbursement of funds from Minnesota  
17 Life, Wells Fargo initiated non-judicial foreclosure proceedings against the underlying property for  
18 failure to pay the mortgage payments since May 2010.

19 Subsequently, Downs filed a complaint alleging ten causes of action against all defendants:  
20 (1) intentional infliction of emotional distress; (2) negligent infliction of emotional distress; (3) breach  
21 of contract; (4) breach of the implied covenants of good faith and fair dealing; (5) unfair claims practices;  
22 (6) conspiracy to defraud; (7) negligence; (8) invasion of privacy; (9) unjust enrichment; and (10) quiet  
23 title. (Doc. # 1, Exh. A.)

#### 24 **B. Discovery Preceding this Motion**

25 The complicated and extensive discovery history of this case as it pertains to the pending motions  
26 is summarized below.<sup>2</sup>

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28 <sup>2</sup> As this court noted in its order disposing of Downs' motion to compel as against Minnesota Life: "Motions to compel, emergency motions, etc., have seemed to be the rule in the discovery history of this case, not the exception. The record reflects this contentious litigation generated some 24 discovery motions." (Doc. # 232 at 2.)

1 The discovery deadline was initially scheduled for July 11, 2012. (Doc. # 40.) It was later  
2 extended on the parties' stipulation to September 10, 2012. (Doc. # 51.) On June 5, 2012, the deadline  
3 was extended again to October 10, 2012. (Doc. # 70 at 2.) Yet another stipulation was approved,  
4 extending the discovery deadline to December 10, 2012. (Doc. # 80 at 2.) The parties sought a final  
5 extension of the discovery deadline (their fourth request) to February 8, 2013 (Doc. # 81); and the  
6 deadline for filing dispositive motions was set for March 10, 2013. This court approved this extension,  
7 noting, however: **"There will be no further extensions."** (Doc. # 82, emphasis original.)

8 On January 3, 2013, prior to the deadline for completion of discovery, Downs filed an emergency  
9 motion to compel discovery against Minnesota Life. (Doc. # 103.) Downs also filed an emergency  
10 motion as to Wells Fargo. (Doc # 109.) The court ordered the parties to engage in a personal consultation  
11 to try to resolve or at least narrow their disputes and scheduled an expedited hearing on these two  
12 emergency motions (as well as several other discovery motions) for January 18, 2013, to the extent any  
13 specific issues remained. (Doc. # 111.)

14 Apparently the court's admonition that the parties needed to satisfy their "meet and confer"  
15 obligations had its desired effect, at least as to Downs' motion to compel against Wells Fargo because  
16 at the January 18, 2013 hearing, Downs and Wells Fargo advised the court they had resolved their  
17 discovery dispute and that Downs was withdrawing her motion against Wells Fargo. (*See* Doc. # 132  
18 at 4.)<sup>3</sup>

19 In late April 2013, approximately ten weeks after the deadline for completion of discovery had  
20 passed, Downs filed another set of motions to compel against Minnesota Life (Doc. # 188) and Wells  
21 Fargo (Doc. # 191).

22 After these motions were filed, Wells Fargo filed a motion for stay of Downs' discovery motions  
23 (Docs. ## 197, 198), which Minnesota Life joined (Doc. # 200). They sought a stay of briefing these

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25 <sup>3</sup> The court notes that Downs' *current* motion to compel against Wells Fargo suggests Wells Fargo reneged on its  
26 agreement which brought about the representation that Downs' motion to compel against Wells Fargo (Doc. # 109) was  
27 withdrawn. As a result, Downs states that she is incorporating the prior motion (Doc. # 109) in its entirety into the  
28 *current* motion. (*See* Doc. # 222 at 3.) This posture is problematic. First and foremost, an attempt to "incorporate" a motion  
which was in fact withdrawn is futile. Moreover, the prior motion (Doc. # 109) was 19 pages with 328 pages of supporting  
documentation (Doc. # 110). Downs should not seek to burden the court with undertaking a review of some 350 pages to  
ascertain what may or may not be germane to her *current* motion.

1 motions until after Judge Hicks decided the pending summary judgment motions. (Doc. # 197 at 2.) As  
2 of that date, the parties' respective motions for summary judgment had been fully briefed and were  
3 considered ripe for resolution. *See* L.R. 7-2(e).

4 The court conducted another expedited status conference on the motion seeking a stay on May  
5 16, 2013. Ultimately, the court agreed with the defendants and stayed briefing on Downs' motions to  
6 compel (Docs. ## 188, 191). The court further stated that:

7 The court is *not*, however, as counsel for Wells Fargo requested, denying  
8 and/or striking Plaintiff's motions to compel in their entirety; it is just  
9 that the court believes that consideration of a motion to compel filed after  
10 the deadline for completion of discovery while dispositive motions are  
11 pending runs counter to principles of judicial economy. If Judge Hicks  
12 grants Defendants' motions for summary judgment as to either or both  
parties, as noted above, obviously the motion to compel as to that party  
becomes moot. If, on the other hand, Judge Hicks denies Defendants'  
motions, the court will direct the parties to complete briefing on the  
merits of Plaintiff's motions to compel, to include, however, a discussion  
of whether Plaintiff's motions were timely filed.

13 (Doc. # 204 at 4; italics original; emphasis added.)

#### 14 **C. Ruling on Motions for Summary Judgment & Effect on Stayed Motions to Compel**

15 On August 23, 2013, Judge Hicks granted Minnesota Life's motion for summary judgment,  
16 effectively terminating it from the case. (Doc. # 207.) On December 4, 2013, Judge Hicks denied  
17 Downs' motion for partial summary judgment (Doc # 213) and granted in part and denied in part Wells  
18 Fargo's motion for summary judgment (Doc # 215).

19 Shortly thereafter, on December 10, 2013, Judge Hicks noted various discovery motions had  
20 been previously filed but stayed pending resolution of the motions for summary judgment. Judge Hicks  
21 denied these discovery motions (Doc. ## 181, 188, 191) without prejudice to allow the parties to re-  
22 evaluate their respective positions in light of his decisions on the motions for summary judgment and  
23 to allow the parties to decide whether to proceed with similar discovery motions. (Doc. # 218.)

24 Downs elected to proceed with her motion to compel against Wells Fargo (earlier lodged as Doc.  
25 # 191) and it was filed as Doc. # 222. The court will not go into detail in describing the substantive basis  
26 of Downs' motion to compel against Wells Fargo because as will be discussed fully below, the court  
27 finds the motion is untimely.

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## II. DISCUSSION

As the court intimated above, the key inquiry here is whether or not Downs timely brought her motion to compel.

### **A. Preliminary Matters**

Preliminarily, the court will evaluate the timeliness of Downs' motion by utilizing the date the underlying motion (Doc. # 191) was filed, April 29, 2013, and not the January 8, 2014 date when the motion was re-filed (Doc. # 222), since the underlying motion was dismissed by the court without prejudice to allow Downs to re-evaluate her motion in light of the rulings on the motions for summary judgment. In addition, the court will *not* relate the date of the filing (either Doc. # 222 or Doc. # 191) back to her earlier motion to compel (Doc. # 109) which was irrefutably *withdrawn* by Downs. (*See* Doc. # 132 at 4.)

Next, the court points out that despite the admonition to address the timeliness issue, Downs' motion is devoid of any discussion of timeliness and the topic was only raised in her reply brief.

### **B. Legal Standard**

Neither the Federal Rules of Civil Procedure nor the Local Rules for the United States District Court for the District of Nevada specify a deadline for filing a motion to compel. Federal Rule of Civil Procedure 16, however, provides that the court shall set appropriate case deadlines, including those related to the completion of discovery. Fed. R. Civ. P. 16(b). To modify a deadline set forth in the scheduling order, a party must establish good cause. Fed. R. Civ. P. 16(b)(4). The Advisory Committee Comments to Rule 16 indicate that good cause is shown when the schedule cannot reasonably be met despite the diligence of the party seeking the extension. Advisory Committee Notes to Rule 16 (1983 amendments).

In accordance with Rule 16, the court issued a discovery plan and scheduling order, and as discussed above, after granting several extensions, the discovery deadline was ultimately extended to February 8, 2013. (*See* Doc. # 82.)

The decision to extend a discovery deadline is discretionary. *See Cornwell v. Electra Central Credit Union*, 439 F.3d 1018, 1026, 1027 (9th Cir. 2006); *see also Packman v. Chicago Tribune Co.*, 267 F.3d 628, 646-47 (7th Cir. 2001) (finding district court did not abuse its discretion denying motion

1 to compel as untimely where the plaintiff waited to file the motion until after discovery had closed and  
2 after the defendants had filed their motion for summary judgment).

3 The Ninth Circuit has highlighted the importance of scheduling order deadlines and the need for  
4 parties to take them seriously:

5 In these days of heavy caseloads, trial courts in both the federal and state systems  
6 routinely set schedules and establish deadlines to foster the efficient treatment and  
7 resolution of cases. Those efforts will be successful only if the deadlines are taken  
8 seriously by the parties, and the best way to encourage that is to enforce the deadlines.  
9 Parties must understand that they will pay a price for failure to comply strictly with  
10 scheduling and other orders, and that failure to do so may properly support severe  
11 sanctions and exclusions of evidence.

12 *Wong v. Regents of University of California*, 410 F.3d 1052, 1060 (9th Cir. 2004).

13 Most courts addressing the issue within the Ninth Circuit have held that a motion to compel  
14 should be filed before the discovery completion deadline, absent a showing of good cause to modify the  
15 scheduling order deadline. Courts have also considered whether the motion was filed before or after the  
16 dispositive motion deadline. In addition, some courts also look at various factors in determining the  
17 timeliness of a motion to compel filed after the discovery deadline.

18 In *Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620 (D. Nev. 1999), Magistrate Judge Johnston  
19 denied a plaintiff's motion to compel as untimely. Magistrate Judge Johnson initially stated the general  
20 proposition that a court may consider a motion to compel untimely when the moving party has unduly  
21 delayed its filing. *Id.* at 622 (citations omitted). He also stated: "A motion to compel filed during the  
22 discovery period would rarely be considered untimely." *Id.* He acknowledged that a motion to compel  
23 might be filed after the close of discovery, but in the absence of unusual circumstances should be filed  
24 before the deadline for dispositive motions. *Id.* In that case, Judge Johnston denied the motion,  
25 concluding it was untimely where the plaintiff delayed filing the motion to compel after a decision had  
26 been rendered on the defendant's motion for summary judgment and on the eve of trial. *Id.*

27 In *Oliva v. National City Corp.*, No. 2:08-cv-01559-PMP-LRL, 2010 WL 1949600 (D. Nev.  
28 May 12, 2010), Magistrate Judge Leavitt similarly denied the plaintiff's motion to compel where the  
29 plaintiff filed it nearly two months after the close of discovery, failed to seek an extension of the  
30 discovery deadline and did not show good cause to modify the scheduling order. *Id.* at \* 4.

31 Magistrate Judge Foley likewise denied a motion to compel filed after the deadline for filing

1 discovery and dispositive motions. *Christmas v. MERS*, No. 2:09-cv-01389-RLH-GWF, at \* 2 (D. Nev.  
2 July 2, 2010).

3 *Rogers v. Brauer Law Offices, PLC*, No. CV-10-1693-PHX-LOA, 2011 WL 3665346 (D. Ariz.  
4 Aug. 22, 2011), identifies various cases where courts within the Ninth Circuit have denied discovery  
5 motions filed after the close of discovery. *Id.* at \* 4 (citing *Kizzee v. Walmart, Inc.*, 2011 WL 3565881,  
6 at \* 1 (D. Ariz. Aug. 15, 2011) (motion to compel discovery made more than three months after  
7 discovery deadline denied as untimely), *Skinner v. Ryan*, 2010 WL 4602935 (D. Ariz. Nov. 5, 2010)  
8 (motion to compel filed a month after deadline to bring discovery disputes to court's attention denied  
9 as untimely), *Christmas v. MERS*, 2010 WL 2695662 (D. Nev. July 2, 2010) (motion to compel filed  
10 after deadline for discovery and dispositive motions deemed untimely), *Oliva v. National City Corp.*,  
11 2010 WL 1949600 (D. Nev. May 12, 2010) (motion to compel discovery filed two months after close  
12 of discovery denied as untimely); *Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620, 622 (D. Nev. 1999)  
13 (motion to compel filed 136 days after defendant's initial responses and close of discovery was  
14 untimely)).

15 *Rogers* also pointed to a survey of decisions in other circuits and districts by the Northern District  
16 of Texas, which concluded that in determining the timeliness of a motion to compel, courts generally  
17 look to the deadline for completion of discovery. *Id.* (citing *Days Inn Worldwide, Inc. v. Sonia*  
18 *Investments*, 237 F.R.D. 395, 397 (N.D. Tex. 2006)). *Rogers* noted that the Northern District of Texas  
19 in *Days Inn Worldwide* identified various factors courts consider in analyzing whether a motion to  
20 compel filed after the discovery deadline is untimely: "(1) the length of time since expiration of the  
21 deadline, (2) the length of time the moving party has known about the discovery, (3) whether the  
22 discovery deadline has been previously extended, (4) the explanation for the tardiness or delay, (5)  
23 whether dispositive motions have been scheduled or filed, [6] the age of the case, [7] any prejudice to  
24 the party from whom the discovery is sought, and [8] disruption of the court's schedule." *Id.* at \* 4  
25 (quoting *Days Inn*, 237 F.R.D. at 398). In evaluating these factors, the court in the District of Arizona  
26 concluded that a motion filed two months after the discovery deadline, and less than a month before the  
27 dispositive motion deadline was untimely. *Id.* at \* 5.

28 In *Agarwal v. Oregon Mut. Ins. Co.*, the plaintiffs specifically argued that their motion, filed after



1 the close of discovery, dispositive motions deadline, and after the motion for summary judgment was  
2 fully briefed, should be considered timely because there is no established deadline for filing a discovery  
3 motion. *Agarwal*, No. 2:11-cv-01384-LDG, 2013 WL 211093, at \* 5 (D. Nev. Jan. 18, 2013).  
4 Magistrate Judge Hoffman rejected that argument, advising the parties that various decisions in this  
5 district had addressed the issue, and determined that none of the circumstances advanced by the plaintiffs  
6 justified the delay in filing the motion to compel. *Id.*

7 In another very recent decision in the District of Nevada, Magistrate Judge Hoffman similarly  
8 ruled that a motion to compel filed approximately four months after the close of discovery and three  
9 months after the dispositive motion deadline was untimely. *Krause v. Nevada Mut. Ins. Co.*, No. 2:12-  
10 cv-00342-JCM-CWH, 2014 WL 428675 (D. Nev. Feb. 4, 2014). *Krause* reiterated that a discovery  
11 motion should be filed before the dispositive motion deadline. *Id.* at \* 2. In denying the motion, Judge  
12 Hoffman pointed out that the plaintiff knew of the deficient responses long before the close of discovery,  
13 the dispositive motion deadline, and before she filed her response to the motion for summary judgment.  
14 *Id.* at \* 3.

### 15 **C. Analysis**

16 As demonstrated above, most cases reviewed by the court suggest that absent a showing of good  
17 cause, a motion to compel filed after the discovery completion deadline is untimely. The cases also  
18 indicate that a motion to compel should be filed before the dispositive motion deadline, absent unusual  
19 circumstances. Yet others indicate that a determination of timeliness of a motion filed after the discovery  
20 completion deadline should be based on a review of a non-exhaustive list of factors. Regardless of the  
21 approach taken, the court reaches the same conclusion in this case: Downs' motion to compel is  
22 untimely.

23 The discovery completion deadline in this case was February 8, 2013. Downs initially filed her  
24 motion to compel (not to be confused with the earlier *withdrawn* motion to compel) on April 29, 2013.  
25 (Doc. # 191.) This was more than two months after the expiration of the discovery completion deadline,  
26 which had been extended various times. This was also more than a month after the expiration of the  
27 dispositive motion deadline of March 10, 2013. Moreover, the motion to compel was filed several weeks  
28 after all briefing on the dispositive motions had been completed. (See Docs. # 180, # 183, # 184.)



1 Therefore, absent a showing of good cause, under the authority followed by most district courts, Downs’  
2 motion to compel is untimely.

3 As the court stated above, Downs did not address the timeliness issue (and therefore did not make  
4 a good cause showing) in her re-filed motion to compel, despite the court’s instruction that the parties  
5 would need to address timeliness if a motion to compel were to be renewed. (*See* Doc. # 222.) In Downs’  
6 reply brief, she does offer several justifications for the delay in filing the motion. Downs’ arguments are  
7 unavailing. She argues that the motion is timely because it relates to discovery requested before  
8 discovery closed and it relates to matters that were subject to a motion filed prior to the close of  
9 discovery. (Doc. # 238.) First, Downs does not address the authority in this district that a motion to  
10 compel should be filed *prior* to the close of discovery. Whether or not the discovery that is the subject  
11 of the motion was requested before the close of discovery is not the relevant inquiry. She does not  
12 explain why, when she knew the discovery completion date was upon her, she did not seek an a  
13 modification of the scheduling order to allow her to timely file a motion to compel. Second, the court  
14 has already determined that Downs cannot relate this motion compel (either Doc. # 191 or Doc. # 222)  
15 back to the motion that she previously withdrew.

16 Downs also suggests that the reason her motion is untimely is because Wells Fargo “has  
17 continuously abused the discovery process by continually refusing to provide the requested discovery.”  
18 (Doc. # 238 at 1.) This excuse, however, does not explain the tardiness of her motion. If she thought  
19 Wells Fargo was abusing the discovery process all along, that is even more reason to have brought the  
20 motion earlier. Alternatively, if Downs anticipated Wells Fargo was going to stonewall her in responding  
21 to discovery, she should have expected she would need to bring a motion to compel; therefore, she  
22 should have sought an extension of the discovery completion deadline so that she could file her motion  
23 in a timely fashion.

24 Downs goes on to argue that she was tardy in filing her motion because she hoped that the motion  
25 would not be necessary because the parties were proceeding with a settlement conference. (Doc. # 238  
26 at 2.) Again, Downs should have prophylactically sought a modification of the scheduling order. When  
27 she failed to do so, she proceeded at her own peril by waiting to file her motion to compel after both the  
28 discovery completion deadline and dispositive motions deadline.

1 In sum, Downs did not file her motion to compel prior to either the discovery completion  
2 deadline or dispositive motion deadline, and she has failed to establish good cause for the delay;  
3 therefore, the motion is untimely.

4 Even taking into consideration the non-exhaustive list of factors utilized by some courts in  
5 determining whether a motion filed after the discovery completion deadline is timely, as the district court  
6 undertook in *Days Inn Worldwide*, the court still concludes Downs' motion to compel is untimely.

7 First, as indicated above, the motion was filed more than two months after the discovery  
8 completion deadline. This militates against finding the motion was timely.

9 Second, Downs has admittedly known about this discovery for quite a long time. This factor  
10 likewise goes against concluding the motion was timely.

11 Third, the court outlined above that the discovery completion deadline was extended numerous  
12 times in this action, and prior to granting the final extension of February 8, 2013, the court admonished  
13 the parties that there would be no further extensions. The third factor also suggests the motion was not  
14 timely and that it should not be permitted.

15 Fourth, the court has addressed Downs' explanations for the tardiness of her filing above, and  
16 has found none of them to be adequate, which goes against a finding of timeliness.

17 Fifth, as the court has repeatedly pointed out, Downs filed her motion after the dispositive motion  
18 deadline and after briefing on the dispositive motions was completed. This factor weighs against a  
19 determining the motion was timely.

20 Sixth, this litigation was initiated in December of 2011. While a trial date has not yet been set,  
21 with the court's congested trial calendar, it will likely be difficult to get this case to trial before its three-  
22 year anniversary date. Thus, the sixth factor cuts against Downs' argument that the motion was timely.

23 Seventh, Downs obviously contends she would be prejudiced if the motion to compel is not  
24 permitted to proceed. This factor therefore weighs in favor of a finding of timeliness.

25 It is also important to note that Downs' opposition to Wells Fargo's motion for summary  
26 judgment did *not* raise the contention, under Federal Rule of Civil Procedure 56(d), that she needed  
27 additional time "to obtain affidavits or declarations or take discovery" in order to adequately oppose  
28 Wells Fargo's motion. (*See* Doc. # 163.)

1 Finally, the court must consider the impact this motion will have on the court's schedule if the  
2 court were to determine it was timely. Initially, the court points out that Wells Fargo may seek review  
3 of any decision rendered by the undersigned on the motion by the district judge, as is its right.  
4 Nonetheless, this would take additional time for review. Then, if the objection were overruled, major  
5 disruption of the court's calendar would result. A new scheduling order would have to be entered to  
6 provide for the re-deposing (for the third time) of the Wells Fargo witness whom Downs alleges  
7 provided inadequate information. (*See* Doc. # 222 at 3-6.) Supplemental answers to interrogatories  
8 would be necessary. (*See id.* at 6-7.) According to Downs, new or at the least additional document  
9 production would have to be undertaken. (*See id.* at 7-10.) The parties would also have to address the  
10 matter of a privilege log. (*See id.* at 10-12.) In view of the contentious discovery history in this case to  
11 date, it is likely allowing this motion to proceed may result in the filing of further motion(s) to compel.

12 In sum, the majority of the factors weigh against a finding that Downs' motion to compel was  
13 timely filed and instead lead the court to conclude that the motion is untimely.

14 Finally, the court notes Wells Fargo's argument that the court already determined that Downs'  
15 motion to compel against Minnesota Life was untimely. (Doc. # 235 at 1.) Wells Fargo is correct (*see*  
16 Doc. # 232 at 13:21-26); therefore, it is logical for the court to reach the same conclusion with respect  
17 to Downs' motion to compel against Wells Fargo. Nevertheless, substantial independent grounds exist  
18 for finding Downs' motion to compel against Wells Fargo untimely.

### 19 III. CONCLUSION

20 In the exercise of its broad discretion concerning discovery matters, the court finds Downs'  
21 motion to compel (Doc. # 222), as well as its predecessor (Doc. # 191) to be untimely. Therefore,  
22 Downs' motion to compel (Doc. # 222) is **DENIED**.

23 **IT IS SO ORDERED.**

24 **DATED: March 12, 2014**

25   
26 WILLIAM G. COBB  
27 UNITED STATES MAGISTRATE JUDGE  
28